

Fair Political Practices Commission
MEMORANDUM

TO: Chairman Getman, Commissioners Downey, Knox, Scott and Swanson

FROM: Carla Wardlow, Chief, Technical Assistance Division
Luisa Menchaca, General Counsel

DATE: May 25, 2001

SUBJECT: Implementation of Proposition 34:
1) Emergency Adoption of Regulations 18421.4—Reporting Cumulative
Amounts; and 18542—Notification of Personal Contributions In Excess
of the Voluntary Expenditure Limits; 2) Approval of Campaign
Disclosure Forms 450, 460, 461, 465, 496, 497, and 501

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This memorandum presents several matters for consideration in the implementation of Proposition 34 as it affects campaign disclosure. New provisions added to the Political Reform Act by Proposition 34 impose mandatory limits on contributions received by candidates for elective state office and by committees that make contributions to candidates for elective state office. State candidates also are subject to voluntary expenditure limits.

Adoption of Emergency Regulations

Proposed Regulation 18421.2—Reporting Cumulative Amounts

At the May 7, 2001, meeting, the Commission authorized revisions to the campaign disclosure forms to require reporting of the following additional information related to Proposition 34:

- ◆ Candidates for elective state office will be required to disclose the cumulative amount of contributions received, per election, from each contributor itemized on the candidate's campaign statement.¹
- ◆ Candidates for elective state office who have accepted the voluntary expenditure limit for a particular election will be required, or be given the option, to disclose, at the end of each reporting period, the total amount of expenditures made that count toward the voluntary expenditure limit for that election.

¹ The new reporting requirements will not affect contributions to or expenditures made by candidates for statewide elective office until November 6, 2002.

- ◆ Committees that make contributions to candidates for elective state office will disclose the cumulative amount of contributions made, per election, to each candidate.

Proposed Regulation 18421.4 (Attachment A) is presented for emergency adoption to implement the new disclosure requirements. Section 84211 specifies the content of campaign disclosure reports filed by candidates and committees. The regulation provides that, in addition to the calendar year cumulative amounts required to be disclosed under Section 84211, cumulative amounts per election must be disclosed for contributions made to or received by candidates for elective state office, as described above.

Section 85400 establishes voluntary expenditure limits for candidates for elective state offices. Candidates who accept the applicable limit are designated in the ballot pamphlet and may purchase space to place a statement in the ballot pamphlet. (Sections 85600 and 85601.)

Section 85401 requires state candidates to file a statement of acceptance or rejection of the voluntary expenditure limit. This information has been added to the Form 501—Candidate Intention.

Subsection (b) of the proposed regulation sets out the disclosure, per election, of **total** expenditures by a state candidate who has accepted the voluntary expenditure limit. (This is the new section on the Form 460 Summary Page.) At the May 7 meeting, the Commission postponed until June the decision whether to make the disclosure mandatory or optional. As discussed at the May meeting, the primary purpose for adding Proposition 34-related disclosure to the forms is to provide the public with some means of monitoring the contribution and expenditure limits. In addition, the disclosure may prevent the filing of erroneous enforcement complaints. By simply looking at the expenditures reported by a candidate on the expenditure schedules of the Form 460, or the cumulative calendar year figures reported on the summary page, it may appear that a candidate has exceeded the expenditure limit.

Staff recommends emergency adoption of Proposed Regulation 18421.4, and that disclosure of the total amount of per election expenditures be required, rather than optional, for candidates who agree to abide by the voluntary expenditure limits.

Proposed Regulation 18542—Notification of Personal Contributions in Excess of the Voluntary Expenditure Limits

Section 85402(a) provides that a candidate who has accepted the expenditure limit is no longer bound by it if an opposing candidate contributes personal funds to his or her campaign in excess of the limit. Section 85402(b) requires the Commission to establish a procedure for notification by candidates who make personal contributions in excess of the limit.

Proposed Regulation 18542 (Attachment B) is presented to implement section 85402(b). The regulation requires the candidate to file an amended Form 501—Candidate Intention with the Secretary of State by guaranteed overnight or personal delivery. Staff of the Secretary of State's office has indicated that they plan to post the information on their web site as soon as it is filed. Staff recommends that the Commission require the amendment to be filed within 24 hours of making contributions in excess of the limit, which is consistent with the late contribution and late independent expenditure reporting provisions of the Act. (See Option 1.)

Staff recommends emergency adoption of proposed Regulation 18542, with the 24-hour filing deadline in subdivision (b)(1).

Adoption of Emergency Regulations

If the Commission elects to adopt emergency regulations, it must make a written finding of emergency that the regulatory action is necessary for the immediate preservation of the public peace, health, safety or general welfare, along with a written statement of facts constituting the emergency. (Reg. 18312(c); *see also* 1974 APA section 11421.) The Commission must forward the statements and regulations to the Office of Administrative Law ("OAL"), and copies to the Senate and Assembly Rules Committees. An emergency regulation adopted by the Commission will take effect on the date it is filed with the Secretary of State (within about 10 days after receipt by OAL). Language describing the finding of emergency and statement of facts is included in the draft regulations.

Approval of Revised Campaign Disclosure Forms

Staff is presenting for approval revisions to several campaign disclosure forms. Some of the revisions are the result of legislative changes enacted last year by SB 2076 and other revisions implement Proposition 34. All of the form changes have been circulated for public comment at least once pursuant to Regulation 18513 and a series of interested persons meetings have been held beginning in December. All of the forms listed below were sent to interested persons on May 9, 2001, and an interested persons meeting was held on May 21, 2001. With the exception of the Forms 501 and 496, revisions to the form instructions are not yet complete and will be presented to you later this year. The following revisions are presented for your approval:

Form 501—Candidate Intention (Attachment C)

As discussed above, the Form 501—Candidate Intention has been revised to implement section 85402, which requires notification by a state candidate if the candidate contributes personal funds to his or her campaign in excess of the voluntary expenditure limit.

Form 460—Recipient Committee Campaign Statement (Attachment D)

At the May 7, 2001, meeting, the Commission authorized the staff to make revisions to the Form 460 related to Proposition 34. These include:

- ◆ The Form 460 Summary Page will include a summary of expenditures made by a state candidate who has accepted the voluntary expenditure limit. The Commission will decide at the June meeting whether to make the summary information voluntary or mandatory.
- ◆ For contributions received, Schedules A (Monetary Contributions), B (Loans), and C (Nonmonetary Contributions) will require a state candidate to disclose the cumulative amount of contributions received from a single contributor per election in addition to the calendar year cumulative amounts currently required. For example, a candidate who receives a \$6,000 contribution, half for the 2002 primary election and half for the 2002 general election, will disclose in the Schedule A “Per Election” column “\$3,000 P-02” and “\$3,000 G-02.”
- ◆ Schedules A, B, and C also will contain two new contributor codes: PTY and SCC. These will be used by state candidates to identify contributions from political parties and small contributor committees.
- ◆ For contributions made, Schedule D (Summary of Expenditures Supporting/Opposing Candidates, Measures and Committees) will require that committees making contributions to state candidates provide cumulative information per election. Using the above example for reporting contributions received on Schedule A, the committee making the \$6,000 contribution (e.g., a political action committee filing Form 460) will disclose that the contribution was made for both the primary and general elections (“\$3,000 P-02” and “\$3,000 G-02”).
- ◆ Schedules E (Payments Made), F (Accrued Expenses), and G (Payments Made by an Agent or Independent Contractor) will contain three new expenditure codes: FIL, LEG, and MBR. These will be used to identify payments for candidate filing and ballot statement fees (FIL), legal defense (LEG), and member communications (MBR).

These changes have been incorporated into the attached version of the Form 460. Revisions to the Form 460 to implement legislative changes enacted in SB 2076 (Stats. 2000, Chapter 853) are also included. In addition, the Form 460 Cover Page was revised at the request of the Secretary of State’s office to move the verification section to the front page of the form.

For purposes of the Proposition 34 requirements, changes to the structure of the Form 460 and have been kept to a minimum. (Most of the changes will affect electronic filers.)

Staff plans to develop guidelines with detailed instructions and examples to assist candidates and committees in complying with the Proposition 34 disclosure requirements. These guidelines and the Form 460 instructions will be presented to you later this year.

The Commission also will discuss on June 8 transfers of contributions by candidates for elective state office from one controlled committee to another. Section 85306(a) requires that transferred contributions be attributed to specific contributors and one of the issues to be decided is whether to require detailed reporting of those contributions. Staff has discussed how this decision will impact the Form 460 and believes that a decision to require detailed reporting will not affect the structure of the form or the Commission's ability to approve the form at this time. Instead, the reporting issues can be resolved in the Cal-ACCESS program and the instructions to the form.

Form 450—Recipient Committee Campaign Statement-Short Form (Attachment E)

This form is used by recipient committees that do not receive contributions of \$100 or more in a calendar year from a single source. Many of these committees make contributions to candidates for elective state office. Therefore, the form has been revised to require the same "per election" breakdown of contributions made to state candidates that is required on Schedule D of the Form 460.

Form 461—Major Donor and Independent Expenditure Committee Campaign Statement (Attachment F)

Individuals and entities (e.g., corporations) that make contributions totaling \$10,000 or more in a calendar year must file campaign reports and use Form 461 for that purpose. Many of them contribute to candidates for elective state office. The Form 461 has also been revised to require the "per election" breakdown of contributions made to state candidates.

Form 496—Late Independent Expenditure Report (Attachment G)

A "late independent expenditure" is an independent expenditure of \$1,000 or more to support or oppose a single candidate or ballot measure that is made during the last 16 days prior to the election at which the candidate or measure is being voted on (the period beginning the day after the last regular campaign report is filed prior to the election and ending the day of the election). (Section 82036.5.)

The Act requires that "late independent expenditures" be reported within 24 hours by fax, telegram, guaranteed overnight delivery, or personal delivery. (Section 84204.) State candidates and committees that have met the \$50,000 electronic filing threshold in section 84605 also must file these reports electronically.

Section 84204(b) specifies the information that must be disclosed on a late independent expenditure report. Proposition 34 amended this section to require that a committee

filing a late independent expenditure report disclose contributions of \$100 or more it has received since its last report as well as the independent expenditures made. Previously, only the expenditures were required to be reported.

Although committees filing late independent expenditure reports are not required to use any particular form to disclose their late independent expenditures, staff developed a reporting form (Form 496) several years ago for the convenience of the filers. For purposes of the Cal-ACCESS electronic filing program, the Secretary of State used the Form 496 as the format for electronic reporting of late independent expenditures.

The Form 496 has been revised to include a schedule for reporting contributions received, including the new PTY and SCC contributor codes that have been added to the Form 460.

Form 497—Late Contribution Report (Attachment H)

A “late contribution” is a contribution of \$1,000 or more that is made to or received by a candidate or a ballot measure committee during the 16 days prior to the election in which the candidate or measure is being voted on (the period beginning the day after the last regular campaign report is filed prior to the election and ending the day of the election). (Section 82036.)

The Act requires that “late contributions” be reported within 24 hours by fax, telegram, guaranteed overnight delivery, or personal delivery. (Section 84203.) State candidates and committees that have met the \$50,000 electronic filing threshold in section 84605 also must file these reports electronically.

Like the late independent expenditure requirement, committees filing late contribution reports are not required to use any particular form to disclose late contributions. Staff developed a reporting form (Form 497) several years ago for the convenience of the filers. For purposes of the Cal-ACCESS electronic filing program, the Secretary of State used the Form 497 as the format for electronic reporting of late contributions.

The Form 497 has been revised to include the new PTY and SCC contributor codes added to the Form 460. Other technical changes were also needed to make this form consistent with the Form 496.

Staff recommends approval of the form changes described above.